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Comptroller General
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Macon Apparel Corporation

**File:** B-253008

**Date:** August 11, 1993

Timothy Sullivan, Esq., and Martin R. Fischer, Esq., Dykema Gossett, for the protester.
Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.
Linda S. Lebowitz, Esq., and Linda C. Glass, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Where the solicitation stated that price was the least important factor in determining the most advantageous offeror, an award to a higher priced offeror was reasonable where the source selection authority reasonably concluded that the awardee's proposal was technically superior to the protester's proposal and was worth a 7 percent higher price.

## DECISION

Macon Apparel Corporation protests the award of a contract to J.H. Rutter-Rex Manufacturing Co., Inc. under request for proposals (RFP) No. DLA100-91-R-0467, issued by the Defense Personnel Support Center, Defense Logistics Agency, for a quantity of men's short sleeve shirts. Macon basically argues that it should have been awarded the contract because it received the same adjectival ratings as Rutter-Rex and its price was 7 percent lower than Rutter-Rex's price.

We deny the protest.

The RFP, issued on an unrestricted basis on February 21, 1992, provided for the award of a firm, fixed-price contract for a quantity of shirts in the base year and the identical quantity of shirts in each of the 2 option years. The RFP stated that the award would be made to the responsible offeror whose proposal, conforming to the RFP, was most advantageous, i.e., offered the best value, to the government, cost or price, technical quality, and other factors considered. The RFP contained the following technical evaluation factors, listed in descending order of importance: (1) product demonstration models; (2) manufacturing plan; (3) past performance; and (4) quality assurance plan. Concerning the past performance evaluation factor, the RFP provided that the assessment of an offeror's past performance would be used to evaluate the credibility of the offeror's proposal and to evaluate the relative capability of the offeror to meet the performance requirements of the RFP. The RFP further provided that the evaluation of past performance would be subjective in terms of determining whether the offeror has consistently demonstrated a commitment to customer satisfaction and timely delivery of quality goods and services at fair and reasonable prices. Because this procurement was a best value buy, the RFP stated that offerors which consistently demonstrated an ability to deliver on time and which consistently improved the quality of their items would receive more favorable consideration. For each evaluation factor, an offeror could receive an adjectival rating of "highly acceptable," "acceptable," "marginally acceptable," or "unacceptable." An offeror would also receive an overall adjectival rating. The RFP stated that technical quality was more important than cost or price, and as proposals became more equal in their technical merit, cost or price would become more important.

Several firms, including Macon and Rutter-Rex, submitted proposals by the closing time for receipt of initial proposals. Following the evaluation of proposals by the agency evaluators, the contracting officer included the proposals of Macon, Rutter-Rex, and two other firms in the competitive range. During successive rounds of discussions, both Macon and Rutter-Rex were asked to explain past and current contract performance delinquencies, and Macon was asked to provide past and current performance records for its affiliated companies since the contracting officer believed that there was the possibility that Macon would assume responsibility for performing its affiliates' contracts. Following the submission of successive revised proposals, the contracting officer requested the same competitive range offerors to submit best and final offers. Macon, which submitted the low evaluated price of $8,070,917, and Rutter-Rex, which submitted the second low evaluated price of $8,630,144, both received overall "marginally acceptable" ratings from the agency evaluators, with both firms receiving "acceptable" ratings for the evaluation factors concerning product demonstration models, manufacturing plan, and quality assurance plan, and "marginally acceptable" ratings for the evaluation factor concerning past performance.

The contracting officer, who served as the agency's source selection authority, acknowledged that the agency evaluators assigned the identical adjectival ratings to Macon and Rutter-Rex. However, the contracting officer did not view Macon and Rutter-Rex as equal under the past performance evaluation factor. He considered Macon as borderline "unacceptable" and Rutter-Rex as borderline "acceptable" for this factor.

In this regard, the contracting officer considered that of Macon's currently active clothing manufacturing contracts, two were on schedule while Macon was at least 6 months behind schedule in delivering an option quantity under another contract. With respect to this last contract, during discussions, although accepting responsibility for the delivery requirements and not "blaming the government for [its] delay," Macon explained that delivery of the option quantity was delayed because of scheduling problems and problems in obtaining material from its suppliers. The contracting officer, who also administered this contract, determined that delivery of the option quantity was inexcusably delinquent, with the delay solely attributable to Macon which had responsibility for managing its suppliers in order to timely meet the delivery requirements. During discussions, Macon also admitted that for the basic quantity under the contract, it had experienced quality problems with a supplier. The contracting officer concluded that Macon's delivery and quality problems were due to a lack of floor management.

In addition, the contracting officer considered the inexcusably delinquent performance of two of Macon's affiliates (which are no longer in business). While Macon and its affiliates had separate plants and equipment, all three of these firms were owned and managed by a common principal and also had the same contract administrator. The key management position at the three firms was held by the same individual, who was involved in the daily operations and decisionmaking at the three firms. The contracting officer, who was responsible for administering some of the contracts performed by Macon's affiliates and dealt exclusively with the same key manager at all three firms, believed that the affiliates also had delivery and quality problems due to a lack of floor management. For example, one affiliate ceased operations during contract performance allegedly because of a significant payment dispute with the agency. While the common principal has proposed to novate this contract to Macon, he has not yet received approval to do so because of informational delays. In addition, after performing only a portion of its contract, another affiliate subcontracted the balance of the contract to another firm which completed the majority of the requirements. The affiliate was 10 months late in performing the contract and shipped below the allowable quantity variation.

Based on this performance history, the contracting officer concluded that Macon's past performance was extremely marginal, bordering on unacceptable. The contracting officer further stated that the reason Macon did not receive an "unacceptable" rating for past performance was because it was on schedule for two of its current active contracts. The contracting officer stated his belief that while Macon was timely performing these two contracts, Macon was able to do so only by essentially ignoring another of its contracts and its affiliate's proposed novated contract. In the contracting officer's view, if Macon were to timely perform these other contracts, it would likely become delinquent on the other two current contracts.

In contrast to Macon's situation, the contracting officer considered that Rutter-Rex, on schedule for two contracts, excusably delinquent for two contracts, and inexcusably delinquent for one contract, offered a more favorable history of contract performance. With respect to one excusably delinquent contract, a shortage of government-furnished material caused the agency to change the contract to require the contractor to obtain the needed material for the option quantity. Although Rutter-Rex encountered supplier problems, Rutter-Rex completed contract performance approximately only 1 month late. With respect to the second excusably delinquent contract, the agency had advance notice that the sole-source material supplier would not furnish the material required for Rutter-Rex to perform this contract. The supplier had advised the agency that it would only produce the material if it could furnish a minimum of 100,000 yards. Rutter-Rex's contract only required approximately 20,000 yards. After awarding the contract to Rutter-Rex, the agency expected to award shortly thereafter a second contract to another firm which would have placed an order with the supplier for the balance of the material. However, the agency took 5 months to award the second contract and the awardee, because of financial difficulties, did not order the material. Only later, because of its own economic situation, did the supplier agree to produce 20,000 yards for Rutter-Rex. After receiving the material, Rutter-Rex was only 2 months late in performing the contract. With respect to the inexcusably delinquent contract, Rutter-Rex's start-up was delayed because the specifications and patterns were revised and Rutter-Rex sought several clarifications. The contracting officer nonetheless expected the firm to timely complete performance.

Based on this review of each offeror's prior performance, the contracting officer determined that Rutter-Rex's proposal presented a "much greater value" to the agency and that an award to Rutter-Rex, at a 7 percent price premium ($559,227), was justified to ensure timely delivery of quality items.[1] Performance of Rutter-Rex's contract has been stayed pending our resolution of this protest.

Macon argues that the contracting officer improperly considered the performance of its affiliates and improperly placed too much emphasis on an offeror's past performance in determining the most advantageous offeror.[2] In this regard, Macon contends that since it and Rutter-Rex received the identical adjectival ratings for each evaluation factor and since both offerors received an overall "marginally acceptable" rating, it should have received the award as the most advantageous offeror since its price was approximately 7 percent less than Rutter-Rex's price.

These evaluation ratings, however, are not controlling. In a source selection decision, numeric point scores and adjectival ratings are merely guides to intelligent decisionmaking; they do not mandate automatic selection of a particular proposal. S. & S. Garment Mfg. Co., B-252807, Aug. 2, 1993, 93-2 CPD ¶ ___; Harris Corp.; PRC, Inc., B-247440.5; B-247440.6, Aug. 13, 1992, 92-2 CPD ¶ 171. In this regard, the selection official is not bound by the conclusions and recommendations of lower-level evaluators. See Bank St. College of Educ., 63 Comp. Gen. 393 (1984), 84-1 CPD ¶ 607. It is for that official to determine whether proposals are essentially equal technically, and thus award on the basis of price, or whether one proposal is technically superior to another and, if so, if it is worth any price premium associated with it. Oregon Iron Works, Inc.; Lakeshore, Inc., B-250528 et al., Jan. 29, 1993, 93-1 CPD ¶ 82. The determinative question is whether the award decision was reasonable and adequately justified in light of the evaluation scheme. Wyle Laboratories, Inc.; Latecoere, Int'l, Inc., 69 Comp. Gen. 648 (1990), 90-2 CPD ¶ 107.

Here, the contracting officer concluded that Rutter-Rex's proposal was technically superior to Macon's proposal and offered a greater value to the agency in light of the

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[1]The contracting officer noted that while both Macon and Rutter-Rex had acceptable product demonstration models, Macon's models had two minor deficiencies while Rutter-Rex's models had only one minor deficiency. Macon also admitted that it has had previous quality problems.

[2]Macon does not challenge its evaluation for any of the other evaluation factors.

respective performance histories of the two offerors such that it was worth the higher cost. We believe the contracting officer reasonably made this determination.

First, we think the contracting officer could reasonably consider the experience of Macon's affiliates in evaluating Macon's past performance. The record shows that while Macon and its affiliates were separate entities with separate plants and equipment, and Macon did not intend to rely on its affiliates for the performance of this contract, Macon and its affiliates shared a common principal who was involved in the daily management and decisionmaking of these three firms. The contracting officer, who had direct knowledge of the firms' performance, believed that Macon and its affiliates each had problems with delivery and quality as a result of a lack of floor management. For this reason, during discussions, the contracting officer requested that Macon explain its own and its affiliates' records of delinquent contract performance. We agree with the contracting officer that because there was the possibility that Macon would assume the additional responsibility for performing an affiliate's contract and because Macon and its affiliates were managed by a common principal, the performance history of Macon's affiliates was relevant to evaluating Macon's past performance and determining whether Macon could timely deliver quality items under this contract.[3]

Second, we think the contracting officer, based on a comparative review of the respective performance histories of Macon and Rutter-Rex, could reasonably conclude that Rutter-Rex was more likely than Macon to timely perform and deliver quality items under this contract. Macon's delinquencies, responsibility for at least some of which Macon accepted, were seen in large measure as a result of a lack of effective internal management. In contrast, Rutter-Rex's delinquencies for two contracts were seen as due primarily to unusual government involvement with the suppliers, while the third delinquency, involving the start-up of another contract, was not expected to interfere with Rutter-Rex's ability to timely complete performance.

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[3]Contrary to Macon's assertion, based on the contracting officer's requests for information during discussions, it is our view that Macon should have been well aware of the contracting officer's position that the performance histories of Macon's commonly owned and managed affiliates would be considered in evaluating its own performance and determining whether it could satisfactorily perform this contract. The contracting officer's conduct of discussions is not in dispute.

Therefore, we think the contracting officer could reasonably determine that Rutter-Rex's proposal presented a greater value to the agency and in that respect was technically superior to Macon's proposal. Since the RFP stated that technical merit was more important than price, we see nothing unreasonable with the contracting officer's decision that the Rutter-Rex proposal was most advantageous to the government even with a 7 percent higher price. Oregon Iron Works, Inc.; Lakeshore, Inc., supra. Accordingly, we have no basis to disturb the award.

The protest is denied.[4]

Robert P. Murphy

for James F. Hinchman
General Counsel

[4]Macon also originally argued that the contracting officer failed to treat its performance history as a matter of responsibility. The agency responded to this allegation in its agency report. In its comments to the agency report, Macon specifically stated that "it [would] not pursue the issue." Accordingly, we deem this issued abandoned and we will not address it. See Mitchell Constr. Co., Inc., B-245884; B-245884.2, Jan. 17, 1992, 92-1 CPD ¶ 92; Electronic Sys. USA, Inc., B-246110, Feb. 14, 1992, 92-1 CPD ¶ 190.